

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

HARRIS CORPORATION,

Plaintiff,

V.

HUAWEI DEVICE USA, INC., HUAWEI
DEVICE CO., LTD., HUAWEI
TECHNOLOGIES USA INC., HUAWEI
TECHNOLOGIES CO. LTD., AND
HUAWEI DEVICE (SHENZHEN) CO.,
LTD.

Defendants.

LEAD CASE

CIVIL ACTION NO. 2:18-cv-00439-JRG

JURY TRIAL DEMANDED

**NOTICE REGARDING DEFENDANTS' RULE 12(b)(6) MOTION
TO DISMISS FOR FAILURE TO STATE A CLAIM UNDER 35 U.S.C. § 101**

On March 8, 2019, Huawei moved to dismiss the Amended Complaint for failure to state a claim, alleging that all claims of the patents-in-suit are patent-ineligible under 35 U.S.C. § 101. Dkt. Nos. 31, 40, 41, and 48. Via a separate notice filed on April 4, 2019, Huawei limited its motion to the claims then asserted. Dkt. 47. In addition, pursuant to the Court's Standing Order Regarding Motions Under 35 U.S.C. § 101, the parties filed a joint letter concerning the parties' disagreement about whether claim construction was necessary to inform the Court's decision regarding the subject matter eligibility of the asserted claims. Dkt. 37. In that letter, Huawei asserted that there were no claim construction disputes requiring resolution. Dkt. 37-1 at 6-7.

On July 12, 2019, Huawei served its Proposed List of Terms and Claim Elements Requiring Construction. Huawei identified 127 separate terms from Harris's Asserted Claims for

construction. *See* Exhibit A.¹ Huawei’s list included proposed terms encompassing each and every one of the Asserted Claim terms originally identified by Harris in connection with briefing on the 101 Motion. Dkt. 37-1 at 4-5; Exhibit A. For example, Huawei asserted in Dkt. 37-1 at 7 that “add[ing] a plurality of encrypting bits” was known in the art. Huawei asserted in Exhibit A at 11 that “encrypting bits” and “by at least adding a plurality of encrypting bits to both the address and data information” require construction by the Court.

Harris respectfully requests that the Court consider Exhibit A in conjunction with its decision on Huawei’s Motion to Dismiss—which Harris has argued should be denied, including because fact and claim construction issues remain for resolution. *See, e.g.*, Dkt. 37-1 at 4-5; Dkt. 40 at 4; Dkt. 48 at 8-9.²

Dated: July 16, 2019

Respectfully Submitted,

By: /s/ Corey Johanningmeier

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¹ Harris’s corresponding list identified eleven terms from among the Asserted Claims of Harris’s seven asserted patents. With respect to Huawei’s five counterclaim patents, Huawei identified nine terms (Exhibit A at 12-13) and Harris identified thirteen.

² Harris acknowledges that this Court’s standing order permits a defendant to propose claim terms for construction even after taking a position that no construction is necessary for section 101 purposes. Accordingly, Harris does not object to Huawei now proposing terms for construction. But Huawei’s change in approach to claim construction provides additional reason that its section 101 motion should be denied.

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CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a) with a copy of this document via the Court's CM/ECF system.

Dated: July 16, 2019

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